

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:ILD:CHI:TL-N-2497-99Supplemental
RAVillageliu

date: September 21, 1999

to: Chief, Examination Division, Illinois District
Attn: Case Manager [REDACTED], Illinois District
Attn: Senior Team Coordinator [REDACTED]
Attn: International Examiner [REDACTED]

from: District Counsel, Illinois District

subject: AO: [REDACTED]
[REDACTED]-[REDACTED] Cycle
Deconsolidated company: [REDACTED]
Year of deconsolidation: Group's taxable year [REDACTED].

Non-Docketed CEP case.¹

On April 13, 1999 we met regarding this case at which time you presented us with some of the facts of this case and requested our assistance with respect to IDR language. On that same date we provided you with the requested assistance. Based on the taxpayer's response, on July 30, 1999 you requested further assistance in this case. We have tried to understand the issues that you are now raising, but find that can not address them without further facts and explanations from you and/or the taxpayer.

In sum, in order for us to be able to prepare a FSA request on your behalf, we need you to explain the facts of this case more fully to us, and provide more details. Specifically, we need you to provide us with the answer to the following questions. If you do not have the answer, at the present time, please provide to us what you can now so we can continue working on your request, and request the missing information from the taxpayer. (b)(5)(AC) [REDACTED]

Further facts required for an FSA request

Prior to [REDACTED], [REDACTED]
was a wholly-owned U.S. subsidiary of [REDACTED]. On [REDACTED]
[REDACTED], [REDACTED] issued \$ [REDACTED] of [REDACTED]

¹This is only a request for further information.

preferred stock. In [REDACTED]'s Board of Director's minutes dated [REDACTED], it was stated that the purpose of the restructure of the ownership in [REDACTED] ([REDACTED]) was to get the full benefit of [REDACTED]'s payment of [REDACTED] taxes by deconsolidating the investment in [REDACTED]. In order to effect the deconsolidation, [REDACTED], which indirectly owns a portion of the investment in [REDACTED], was to issue about \$ [REDACTED] of preferred stock to third party investors.

1. (b)(5)(AC)
(b)(5)(AC)
[REDACTED]
2. Please verify for us that [REDACTED] was the company that was eliminated from the consolidated return group; and, (b)(5)(AC)
[REDACTED]?
3. Please explain to us who the actual shareholders of [REDACTED] were before the deconsolidation (apparently only [REDACTED]) and after; Was there only one class of stock, before and after?; Was it held [REDACTED] by [REDACTED] before and after the deconsolidation?; Did [REDACTED] hold it directly, or indirectly and constructively, before and after the deconsolidation?; If indirectly and/or constructively, who were the other owners, before and after the deconsolidation; and explain what their ownership shares were?
4. What exactly was the ownership relationship between [REDACTED], [REDACTED] ([REDACTED]) before and after the deconsolidation? Please be specific as to the type of shares or beneficial interests that existed before and after the deconsolidation; and, what entities held what shares or beneficial interests.
5. Was [REDACTED], a foreign corporation (say a [REDACTED] Corporation), a limited liability company, or a partnership; and, how was it treated by the taxpayer (as a corporation or a partnership) in the returns?

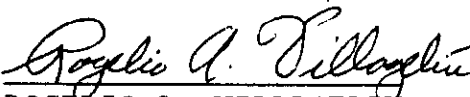
Please Provide a list of all of the members of the [REDACTED] affiliated group, as defined in section 1504(a), before [REDACTED].

7. Please provide a list of all of the members of the [REDACTED] affiliated group, as defined in section 1504(a), after [REDACTED].
8. Please provide a list of all corporations that were not included in [REDACTED]'s affiliated group because of the exceptions in I.R.C. §1502(b)(1) through (b)(7) for the taxable years in question.
9. Please provide a list of all corporations that would be included in [REDACTED]'s affiliated group if the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a) for the taxable years in question.
10. Provide us with any other explanation that you may deem appropriate to attempt to present a comprehensive picture of the relevant facts of this case for the national office.

Conclusion

This concludes our request for more facts to assist you in obtaining a FSA. As soon as we receive your answers, we will be in a better position to attempt to proceed forward with your request for assistance. If you have any questions, please contact the undersigned at (312) 886-9225, ext. 308.

RICHARD A. WITKOWSKI
District Counsel


By: ROGELIO A. VILLAGELIO
Special Litigation
Assistant

CC: District Counsel, Illinois District

CC: Assistant Regional Counsel (TL) (MS)

CC: Assistant Regional Counsel (Large Case) (MS)

A: [REDACTED]tl-n-2497-99supp.wpd

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:ILD:CHI:TL-N-2497-99
RAVillageliu

date: April 13, 1999

to: Chief, Examination Division, Illinois District
Attn: Case Manager [REDACTED], Illinois District
Attn: Senior Team Coordinator [REDACTED]
Attn: International Examiner [REDACTED]

from: District Counsel, Illinois District

subject: AO: [REDACTED]
[REDACTED] Cycle
Deconsolidated company: [REDACTED]
Year of deconsolidation: Group's taxable year [REDACTED].

Non-Docketed CEP case.¹

On April 13, 1999 we met regarding this case at which time you presented us with the facts set forth below and requested our assistance with respect to IDR language. This is to respond to your request for assistance.

Facts

Prior to [REDACTED], [REDACTED] was a wholly-owned U.S. subsidiary of [REDACTED]. On [REDACTED], [REDACTED] issued \$ [REDACTED] of preferred stock. In [REDACTED]'s Board of Director's minutes

¹This opinion is being issued by District Counsel, Illinois District. It provides language to be used in IDRs and summonses, to assist you in gathering relevant facts. The recommendations which this opinion contains are based on well-established legal principles and policy regarding IDRs and summonses. Therefore, this opinion has not been pre-reviewed in our national office, prior to its being issued. A copy of this opinion, however, is being sent to the national office for coordination purposes. Although you have not asked us to obtain formal or informal FSA on this case at this time, once the facts in this case are further developed, you may want to contact us again, if you feel that formal FSA or informal FSA, pertaining to the substantive aspects of applying I.R.C. Section 904(i) and Treas. Reg. Section 1.904(i)-1 to the facts of this case, or any other pending questions would be helpful to you.

dated [REDACTED], it was stated that the purpose of the restructure of the ownership in [REDACTED] ([REDACTED]) was to get the full benefit of [REDACTED]'s payment of [REDACTED] taxes by deconsolidating the investment in [REDACTED]. In order to effect the deconsolidation, [REDACTED], which indirectly owns a portion of the investment in [REDACTED], was to issue about \$ [REDACTED] of preferred stock to third party investors.

Assistance requested: IDR language (which, if necessary, will later become summon's language) to develop the facts further.

Analysis and Discussion

IRC Section 904(i) authorizes issuance of regulations to prevent manipulation of foreign tax credit limitations by affiliated groups. This manipulation is done in various ways, one of which is to eliminating a U.S. subsidiary from the consolidated group. Reg. Section 1.904(i)-1 was adopted in 1995 to deal with this issue. It defines affiliates to prevent elimination of U.S. corporations from the consolidated return group and requires each affiliate to be treated as if it were part of the same consolidated return group for the part of the year during which the corporations involved were affiliates. Treas. Reg. Section 1.904(i)-1(a) and (b). This forced consolidation applies only for purposes of the foreign tax credit provisions of I.R.C. Sections 901 through 908, Section 960 and Section 59(a).

Language requested

We believe that you are justified and should serve an IDR on [REDACTED] and a similar IDR on [REDACTED] (and if necessary, summonses) to gather further facts with respect to the deconsolidation. Based on our discussions, we believe that the following IDR (potential summons) language will assist you in gathering further facts to determine whether the deconsolidation in this case was effected to manipulate the foreign tax credit limitations.

1) Provide any and all letters, correspondence, inter-company memoranda, intra-company memoranda, workpapers, recommendations, presentation materials, analyses, board of director minutes and resolutions from any of the affiliates or former affiliates, documents, or any other books and records that were used in the decision making process or in any other manner, that led to the deconsolidation of [REDACTED] from the [REDACTED] consolidated return group, that occurred on or about [REDACTED].

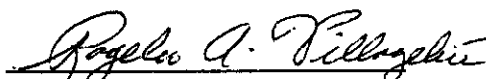
2) Identify with particularity any of the items set forth in paragraph number 1, above, in your possession or control, which you will not provide to the Service, in response to this Information Document Request or Summons.

3) Identify with particularity the alleged claim of privilege you are asserting for each item, set forth in paragraph number 1, above, which you will not provide to the Service, in response to this Information Document Request or Summons.

Conclusion

This concludes our legal opinion, if you have any questions, please contact the undersigned at (312) 886-9225, ext. 308.

RICHARD A. WITKOWSKI
District Counsel

By: 
ROGELIO A. VILLAGELIU
Special Litigation
Assistant

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CC: Assistant Regional Counsel (TL) (MS)

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CC: DOM:FS

A: [REDACTED]tl-n-2497-99.wpd